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Supreme Court, U.S.
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No. _____

In The Supreme Court Of The United States

MARGARET BRADSHAW, Warden,

Petitioner,

v.

KENNETH T. RICHEY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a federal court hearing a habeas corpus challenge to a state criminal conviction can substitute its own interpretation of state law in the place of the state's highest court on the issue of whether state law allows the use of transferred intent to satisfy the intent element of the criminal offense?

2. Whether, in a federal habeas challenge to a state conviction, AEDPA prevents the federal court from undertaking its own de novo review of an ineffective assistance of trial counsel claim, and from granting a writ based on facts that were not presented to the state courts?

LIST OF PARTIES

The Petitioner is Margaret Bradshaw, the Warden of the Mansfield (Ohio) Correctional Institution.

The Respondent is Kenneth T. Richey, an inmate of the Mansfield (Ohio) Correctional Institution.

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A. Kenneth Richey killed two-year-old Cynthia Collins during his attempt to kill his ex-girlfriend. 6

B. A state court three-judge panel convicted Richey and sentenced him to death. 7

C. Richey litigated his sufficiency-of-the-evidence claim on the merits in state court during direct appeal. 8

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D. Richey litigated his ineffective-assistance-of-trial-counsel claim during his post-conviction litigation..... 9

E. The district court rejected Richey's sufficiency-of-the-evidence and ineffective-assistance-of-trial-counsel claims..... 10

F. In a 2-1 decision, the Sixth Circuit reversed the district court and vacated Richey's conviction..... 11

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A. The decision below conflicts with the Court's precedent and opinions in four other circuits, which recognize that a federal habeas court cannot reject a state supreme court's determination of a matter of state law..... 13

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PETITION

The Attorney General of Ohio, on behalf of the Warden of the Mansfield Correctional Institution in Mansfield, Ohio, ("Ohio") respectfully petitions for a writ of certiorari to review the order of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The United States Sixth Circuit Court of Appeals Opinion is reproduced at App. 1a–59a. The order from that court certifying a question of state law to the Ohio Supreme Court is reproduced at App. 220a–33a. The order from the Ohio Supreme Court denying an answer to the certified question is reproduced at App. 234a. The Sixth Circuit's denial of rehearing en banc is reproduced at App. 60a–61a. The United States District Court for the Northern District of Ohio's Memorandum of Opinion and Order is reproduced at App. 62a–220a. The Ohio Supreme Court's opinion on direct appeal is reproduced at App. 235a–71a. The opinions of the Ohio Court of Appeals on direct appeal are reproduced at App. 272a–322a. The Ohio Supreme Court's opinion denying discretionary review of Richey's first post-conviction relief petition is reproduced at App. 335a. The opinion of the Ohio Court of Appeals affirming the denial of Richey's first post-conviction relief petition is reproduced at App. 336a–42a. And the opinion of the Ohio Court of Common Pleas denying Richey's first post-conviction relief petition is reproduced at App. 343a–58a.

JURISDICTIONAL STATEMENT

The United States Court of Appeals issued its opinion on January 25, 2005. The Sixth Circuit denied the Warden's petition for rehearing with a suggestion for rehearing en banc

on April 15, 2005. The Warden timely filed her petition and invokes the Court's jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 2254 of Title 28 of the United States Code provides in relevant part:

> (d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to a judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
>
> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.
>
> (e) (1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.
>
> (2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that—

(A) the claim relies on—

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

Ohio Revised Code ("O.R.C.") § 2903.01, Ohio's aggravated murder statute in effect when Richey committed his crime, is reproduced at App. 359a–60a.

INTRODUCTION

The Sixth Circuit Court of Appeals ordered Ohio to release or retry a convicted killer. It did so based on an untenable view of a federal court's role under AEDPA in reviewing state court criminal convictions. One of the bedrock principles of habeas review, even before AEDPA, is that habeas will not lie for alleged errors of state law. Yet the court below simply ignored that principle, granting habeas based on a view of Ohio law that the Ohio Supreme Court had rejected *in an earlier proceeding in this very case.* And in further defiance of the limitations AEDPA imposes, the court below based its review of the state court decision on facts not included in the state court record. The dramatic expansion of federal court power reflected in the decision

below conflicts with both common sense and the common understanding among the circuits regarding AEDPA's reach, and threatens to undermine, if not eviscerate, the federalism and comity notions that animate that statute.

While the court below granted relief on two separate grounds, each relies on a deeply flawed understanding of AEDPA's analytical framework. First, and most important, the decision below creates a direct conflict among the circuits regarding the extent of a federal habeas court's power to define the elements of a state crime. One of the fixed stars of habeas jurisprudence is that federal courts may not grant habeas relief based on alleged state court errors of state law. Before the decision below, the circuits had uniformly understood that to mean that, except in extraordinary circumstances clearly not present here, habeas petitioners could not challenge state court determinations regarding either what constituted the necessary elements for a state crime or what legal theories the state could rely on in meeting those elements. In an example of particular significance here, the Seventh Circuit held that where the state supreme court has endorsed the use of "transferred intent" to meet the intent element of a crime, that determination is binding on federal habeas courts. See *Gilreath v. Hanks*, 1996 U.S. App. Lexis 20340, at *6 (7th Cir. Aug. 8, 1996).

The decision below, however, marks a radical departure from this previously-uniform understanding among the circuits, starkly contrasting with decisions like the Seventh Circuit's *Gilreath* decision. Here, the Ohio Supreme Court ruled *during Richey's own direct appeal* that Ohio law allows the use of transferred intent to meet the intent element of murder: "The doctrine of transferred intent is firmly rooted in Ohio law." App. 250a (quotation marks omitted). The Sixth Circuit, however, based its grant of habeas relief on its own contrary view of Ohio law: "[W]e must find that the State could not apply transferred intent in order to satisfy the